

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Policy and Rules Concerning)
the Interstate, Interexchange)
Marketplace)
)
Implementation of Section 254(g))
of the Communications Act of)
1934, as amended)
_____)

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CC Docket No. 96-61

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WASHINGTON, D.C. 20554

**REPLY COMMENTS OF SPRINT ON SECTIONS III, VII,
VIII AND IX OF NOTICE OF PROPOSED RULEMAKING**

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SUMMARY

The initial comments filed by parties representing virtually every segment within the broad telecommunications spectrum confirm Sprint's position that the Commission's mandatory detariffing proposal -- insofar as it applies to services provided to residential and small- to medium-sized business customers -- is ill-advised as a matter of policy. At most, the comments establish that the Commission should simply reinstate its highly successful permissive detariffing policies adopted in the *Competitive Carrier* proceeding.

Support for the Commission's mandatory detariffing proposal is, for the most part, confined to the large user segment of the market and a few of the RBOCs. The large users argue that mandatory detariffing should be adopted in order to eliminate the ability of a carrier to rely upon the filed rate doctrine to change provisions of its long-term contract arrangements with large customers. However, the elimination of a carrier's ability to invoke the filed rate doctrine in such instances does not justify the adverse consequences which would occur from applying mandatory detariffing to the mass market services provided to residential and small- to medium-sized business customers. In any case, concerns raised by the large users about carriers invoking the filed rate doctrine to abrogate key provisions of a customer's long-term service arrangement would appear to be overblown.

The RBOCs allege that tacit price collusion is occurring in the interexchange market; however, they do not support such allegations with any convincing evidence. Moreover, they advance such allegations not necessarily to urge mandatory detariffing but to support an argument that they should be allowed to enter the interexchange markets within their respective regions as rapidly as possible. This argument is totally irrelevant to the issues in this proceeding.

The RBOCs also have taken the opportunity presented by this proceeding to renew their collateral attack on the Commission's dominant/nondominant regulatory structure by arguing that the Commission's detariffing policy must be applied to all carriers on an even-handed basis. Asymmetrical regulation is due to asymmetrical market power. Contrary to the unsupported allegations of the RBOCs, such regulation has not harmed consumers or competition. Rather, it has contributed to the development of what is now an increasingly competitive interexchange market.

Finally, the equipment manufacturers' opposition to the Commission's proposal to permit nondominant IXCs to offer bundled packages of CPE and interexchange services is based upon the view that the factors which led to the adoption of anti-bundling rule in 1980 still exist today. Given the competitiveness of both the CPE and transmission markets, such argument is without basis.

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**REPLY COMMENTS OF SPRINT ON SECTIONS III,
VII, VIII AND IX OF NOTICE OF PROPOSED RULEMAKING**

Sprint Corporation ("Sprint") hereby respectfully submits its reply to the comments filed on the issues set forth in Sections III, VII, VIII and IX of the Commission's *Notice of Proposed Rulemaking* ("Notice"), FCC 96-123, released March 25, 1996 in the above-captioned proceeding.

I. THE COMMENTS DEMONSTRATE THAT THE COMMISSION'S MANDATORY DETARIFFING PROPOSAL IS NOT IN THE PUBLIC INTEREST AND SHOULD NOT BE ADOPTED.

The initial comments filed in this phase of the proceeding here confirm Sprint's position that the Commission's proposal to invoke its newly gained forbearance authority granted by Section 10(a) of the Communications Act, 47 U.S.C. §10(a), to prohibit nondominant carriers from filing or leaving on file tariffs for their domestic service offerings -- insofar as such proposal extends to residential and small- to medium-sized business

services -- is ill-advised as a matter of policy.¹ At most, the comments establish that the Commission should exercise its forbearance authority to reinstate its highly successful permissive detariffing policies adopted in the *Competitive Carrier* proceeding in CC Docket No. 79-252.

Parties from practically every segment within the broad telecommunications spectrum, including consumer representatives, state public utility commissions, small businesses, local exchange carriers ("LECs") and interexchange carriers ("IXCs"), emphasize the importance of tariffs in today's increasingly competitive telecommunications marketplace. Virtually all of them agree that the reasons advanced in the *Notice* for eliminating tariffs are no longer valid.

For example, several parties explain that tariffs for mass market services enable consumers within those markets to easily obtain information about the service offerings of all carriers in order to make intelligent comparisons and to assure that they are not being discriminated against. See, Consumer Federation of America and Consumers Union ("CFA/CU") at 3-8; Market Dynamics at 11; TRAC at 4; and Pennsylvania Office of Consumer Advocate

¹ Several parties also question, as did Sprint (see Comments at 3, fn. 1), whether the forbearance authority granted the Commission under Section 10(a) enables the Commission to mandate detariffing. They state that, at most, Section 10(a) enables the Commission to institute a permissive detariffing policy. See, e.g., AT&T at 7-12; Comptel at 19-22; GTE at 4-7; MFS at 3-5; and Casual Calling Coalition at 12-13.

("PaOCA") at 2-3. In fact, some commenting parties believe that the role of tariffs in providing information to the public is so critical that they would have the Commission require that carriers publicly post their offerings electronically via the Internet in the event that the Commission adopts its mandatory detariffing proposal.² See, e.g., Iowa Utilities Board at 2-3; GSA at 11-16. Others point out that tariffs enable carriers to enforce the Commission's regulatory policies, including any new Commission policy concerning geographic rate averaging and rate integration which may be adopted in this proceeding. See, e.g., General Communications Inc. ("GCI") at 4; State of Alaska at 2; Pennsylvania PUC at 8; and Louisiana PUC at 7. And, several parties explain that because carriers are able rely upon their tariffs to define their legal relationship with their customers, they are able to minimize their transaction costs and thereby provide service to the millions of residential and small- to medium-sized business customers more efficiently than would be

² Sprint does not necessarily object to the imposition of a requirement that, in lieu of filing tariffs with the Commission, carriers post their tariffs for their mass market offerings to an Internet WEB site maintained by the Commission or a private contractor designated by the Commission. However, if the Commission does impose such requirement, it should find that these postings would be equivalent to the filing of tariffs with the Commission and therefore would define the legal relationship between the carriers and their customers. Such finding is justified since the Commission's authority for prescribing a requirement that carriers post their schedules at places other than the Commission's offices emanates from Section 203(a) of the Act.

the case if carriers had to enter into contracts with each customer before providing service.³ See, e.g., AT&T at 15-17; Comptel at 10; Business Telecom Inc. at 5-6; MCI at 10-11; Market Dynamics at 13-16.

Support for the Commission's mandatory detariffing proposal is, for the most part, confined to the large user segment of the market and a few of the Regional Bell Operating Companies ("RBOCs"). But, their support here is based upon arguments which Sprint and others have already demonstrated are without merit.

A. Concerns About The Filed Rate Doctrine Are Unfounded.

The large users argue that mandatory detariffing should be adopted in order to eliminate carrier reliance upon the filed rate doctrine. See Ad Hoc Telecommunications Users Committee *et al.* ("Ad Hoc") at 4-5 (customers of individually tailored offerings "will be able to enforce the contracts they have negotiated with the carriers" since carriers would no longer be able to invoke the "filed rate doctrine as a shield" for abrogating such long term arrangements); American Petroleum Institute ("API") at 6 ("...mandatory detariffing...will moot the

³ In the Notice (¶34), the Commission mentions that one of the benefits of a mandatory detariffing would be elimination of tariffs as a vehicle for carriers to limit their liability for consequential damages due to ordinary negligence. However, no party complains about such limitations. In fact, several parties agree with Sprint that such provisions are a reasonable trade-off for the carriers' obligation to provide service upon demand and are otherwise in the public interest. See, e.g., Ameritech at 5-8; UTC at 6; Comptel at 17-18.

filed rate doctrine"); Capital Cities/ABC, Inc., CBS Inc., NBC, Inc. and Turner Broadcasting System, Inc. ("the Networks") at 4 (same); GSA at 8-9 (same).⁴ However, the elimination of a carrier's ability to invoke the filed rate doctrine in instances where it is providing service to large users pursuant to contracts or other long-term arrangements simply does not justify the increased transaction costs, curtailment of services and other adverse consequences which Sprint and others have explained would occur from applying such policy to the mass market services provided to residential and small- to medium-sized business customers. Indeed, Ad Hoc and the Networks appear to recognize this. Ad Hoc would have the Commission limit mandatory detariffing to "customer-specific service arrangements." Ad Hoc at 1-2. The Networks would limit mandatory detariffing for services provided to large business customers through negotiated

⁴ GSA disagrees with the Commission's principal reasons for mandating detariffing. GSA at 3-7. However, it supports the Commission's proposal here not only because of its concerns over the filed rate doctrine but also because it believes that mandatory detariffing will eliminate the "avalanche of paper" containing tariff revisions which nondominant carriers file with the Commission. Comments at 9-11. Given the fact that nondominant carriers are required to file all of their tariffs on 3½ inch computer diskettes, GSA's concern here about paperwork burdens would appear to be overstated. Moreover, even if carriers continued to file tariffs on paper, it is most unlikely that an "avalanche" would result with permissive detariffing. The Commission's previous experience under a permissive detariffing suggests that the number of tariff revisions filed with the Commission would be sharply curtailed. Some carriers would elect only to file tariffs for services provided to mass

Footnote continues on next page.

agreements.⁵ Networks at 3 and 4-5 (mentioning the long range planning difficulties encountered by large users under a tariff regime in which provisions in their negotiated contracts can be superseded by tariff revisions and pointing out that, with mandatory detariffing, these large users will be able to enforce their bargained-for contractual provisions). As set forth in its initial comments (at 24-25), Sprint also believes that the detariffing of long-term contract arrangements, which, for the most part, are tailored to the needs of individual subscribers, would not raise any real difficulty and that, if application of the filed rate doctrine is thought to be a problem for long-term contract arrangements, mandatory detariffing should be limited to such arrangements.

In any case, concerns raised by the large users about carriers invoking the filed rate doctrine to abrogate key provisions of a customer's long-term service arrangement would appear to be overblown. As Comptel points out, the Commission just fifteen months ago found that the likelihood of carriers using the filed rate doctrine in such instances "is *de minimis*,"

residential and small- to medium-sized business market segments, while other carriers would elect not to file tariffs at all.

⁵ Although API argues that the Commission should mandate detariffing of all non-dominant carrier service offerings including those in the residential and small business segments of the market, its entire discussion is limited to individually negotiated service agreements. Comments at 3 n. 6.

since a carrier facing competition, which attempts to make changes in contract-based tariffs, "'risks losing the future business of the affected customers and damaging its own reputation in the marketplace.'" Comptel at 16-17 quoting *Competition in the Interstate Interexchange Marketplace*, 10 FCC 4562, 4573 (1995) (*Interstate Competition Decision*). See also, AT&T at 20 fn. 22 (a carrier could hardly succeed in today's increasingly competitive interexchange market if "it is acquires a reputation" of using tariffs "to go[] back on a bargain" negotiated with a customer). This finding by the Commission is borne out by the fact that none of the large users (or their representative associations) cites any instance where a carrier has invoked the file rate doctrine to change key provisions of a customer-specific contract tariff or other long-term arrangement which it (or a member of an association) had previously negotiated with such carrier.⁶

⁶ API cites dicta from *Capps v. MCI*, 863 F.Supp. 1560, 1561 (M.D.Fla. 1994) stating that a carrier's tariffs and "'not the representations of its salespeople'" determine the rates, terms and conditions of the service being provided the customer. The relevance of this observation is hardly apparent. As AT&T notes, application of the filed rate doctrine in such situations "is analogous to 'merger,' 'integration' or so-called 'entire agreement' clauses in commercial contracts." AT&T at 21 fn. 24. Such clauses "generally provide that the terms of the transaction are governed exclusively by the document at issue," *id.*, and cannot be modified by the representations by one of the parties to the contract. Other cases cited by API were either decided well before the Commission found that the interexchange market was substantially competitive or do not involve the application of the filed rate doctrine.

The examples cited by Ad Hoc do not prove its contention that large users' concerns about the filed rate doctrine "are not at all hypothetical." Ad Hoc at 6. For instance, Ad Hoc offers no evidence for its claim that when Sprint filed its existing Custom Network Service Arrangements ("CNSAs") into its Tariff 12 in March 1995, Sprint included two provisions in the general terms and conditions section of such tariff that were at odds with previously negotiated CNSAs. Rather, it only speculates -- without any foundation -- that the provisions it cites contradict provisions in the specific CNSAs.⁷ And, as might be expected under such circumstances, Ad Hoc is incorrect since the individual option would specify any material term or condition that was inconsistent with a general term and condition. Moreover, none of Sprint's CNSA customers complained about the provisions either informally to Sprint or directly to the Commission. Thus, Ad Hoc's suppositions here provide absolutely

⁷ Ad Hoc states that one provision which limits application of the rates, terms and conditions of the CNSA to "sites that are owned or leased to entities in which the customer owns at least a 20% equity share or that is a franchisee of the customer ... undoubtedly contradicts provisions negotiated by one or more of Sprint customers." Ad Hoc at 8. It argues only that the other provision, which enables Sprint to terminate service and impose a penalty on a customer who ceases to use a material amount of service provided under its CNSA, was "unlikely" to have been included in all of Sprint's negotiated service arrangements with its large customers. *Id.* at 8-9.

no support for Ad Hoc's view that Sprint uses the filed rate doctrine to disadvantage its customers.

If the Commission adopts a permissive detariffing policy for all of a carrier's service offerings, and if under such policy a carrier continues to file contract tariffs, Sprint does not believe there is any need to modify the "substantial cause" standard adopted in *RCA American Communications Inc.*, 84 FCC 2d 353 (1980); 86 FCC 2d 1197 (1981); and 2 FCC Rcd 236 (1987) for allowing modifications to such offerings. As Sprint explained in its initial comments, this standard gives the Commission all the power it needs to protect customer rights under individually negotiated contracts. See also AT&T at 31-35; GTE at 9-10. None of the parties who argues for a more stringent standard has presented any evidence to show that the "substantial cause" test has been ineffective in the past at protecting customers or that it will prove ineffective in the future given increasing competition in the market.

B. Allegations Of Tacit Price Collusion In The Interexchange Market Are Without Basis.

In its initial comments, Sprint pointed out that there is no reliable evidence to support the notion that the IXC's are engaged in anticompetitive price collusion. Accordingly, there is no "collusion" problem which needs to be fixed by mandatory

detariffing.⁸ Sprint at 21-22. Other parties agree with Sprint that allegations of anticompetitive pricing behavior by the IXCs are meritless. See e.g., Comptel at 11-13; AT&T at 22-24. In fact, in its Notice in CC Docket No. 90-132, *Interstate Competition Decision*, 5 FCC Rcd 2627 (1990), the Commission explained that such factors as the number of IXCs in the market and their intense rivalry, the plethora of heterogeneous business services, the strong incentive of carriers to reduce prices in order to win long-term commitments from large businesses and the cost structure of the IXC industry, have resulted in vigorous competition in the provision of business services which, in turn, made it "unlikely that there will be tacit collusion in the pricing of interstate business services." *Id.* at 2640. As Comptel observes (at 13), the Notice here "does not identify any change in the interstate interexchange market" which would lead to a conclusion that such explanation was no longer correct. On the contrary, the Commission later affirmed its conclusion regarding the nature of competition in the business segment of the market. *Interstate Competition Decision*, 6 FCC Rcd 5880

⁸ Several parties recognize that tariffs provide carriers with a relatively inexpensive way to learn of each other's offerings but are not particularly troubled by it. In fact, they point out that price disclosure through tariffs makes the market more and not less competitive. See e.g., Market Dynamics at 14 ("...tariffs give carriers the ammunition they need to quickly respond to price changes and devise new services"); CFA/CU at 7 fn. 14 ("...knowledge of a competitor's prices can lead to the most vigorous competition"); TRAC at 3 (same).

(1991). And, of course, since its final decision in the CC Docket No. 90-132 proceeding, the Commission has found that competition in the interexchange market has intensified to a point where there is, at the present time, no dominant carrier. *Motion of AT&T to be Reclassified as a Non-Dominant Carrier (AT&T Reclassification Order)*, 11 FCC Rcd 3271 (1995). Collusive pricing behavior would be inconsistent with a competitive market.

Allegations that tacit price collusion is occurring in the interexchange market continue to be advanced primarily by several RBOCs. Such allegations are raised not necessarily to urge mandatory detariffing -- the policy being considered in this proceeding -- but rather to support an argument that the RBOCs should be allowed to enter the interexchange markets within their respective regions as rapidly as possible. See, e.g., Ameritech at 9; Bell Atlantic at 9; BellSouth at 3; Nynex at 4; and Pacific Telesis at 10. Not only is the premise of RBOCs' argument incorrect (there is no problem of collusion), but the argument itself -- that the RBOCs should be allowed to provide in-region interexchange service as rapidly as possible -- is plainly irrelevant to the issues in this proceeding.

Section 271 of the Act sets forth the conditions which must be met before the RBOCs are allowed to enter the in-region interexchange market. If the RBOCs are suggesting here that the Commission be less than scrupulous in ensuring that these conditions are fully satisfied before permitting such in-region

entry, the Commission must reject such course of action. The Section 271 conditions are designed to ensure that the RBOCs will not be able to wield their monopoly power over critical exchange access services to harm their interexchange rivals. Thus, the Commission must insist that these conditions are fully and completely satisfied before allowing RBOC in-region entry. Otherwise, the Commission's primary concern will not be the phantom problem of tacit price collusion in the interexchange market, but the very real problem of a diminution of what is today an increasingly competitive interexchange market as the RBOCs exercise their market power to the detriment of consumers and competition.

In any case, the RBOCs do not support their allegations of tacit price collusion in the interexchange market with any convincing evidence. Pacific Telesis simply states that the "evidence of tacit price collusion ... is strong" without further reference to such evidence. Pacific Telesis at 10. Bell Atlantic and Nynex continue to rely upon the evidence which the RBOCs submitted in response to AT&T's motion to be classified as a nondominant carrier but which the Commission has rejected as "conflicting and inconclusive," *AT&T Reclassification Order*, 11 FCC Rcd at 3314. Bell Atlantic at 2 and fn. 4; Nynex at 4 and fn. 10.

BellSouth attempts to support allegations of tacit price collusion by submitting newly signed affidavits by the same

economists -- Professors Paul W. MacAvoy and Jerry A. Hausman -- whose affidavits were included in the RBOCs' submission in the AT&T Reclassification proceeding and, as stated, were found not to contain any convincing evidence of tacit price collusion. Their affidavits here likewise do not establish that such anticompetitive pricing behavior is occurring in the interexchange market.⁹

BellSouth claims (at 6-7) that the evidence presented by the affidavit from Professor MacAvoy demonstrates that price-cost margins are almost the same for discount plans as for non-discount plans and thus the offering of such discounts does not eliminate collusive pricing behavior by the IXCs in the market. Professor MacAvoy, however, used only a few specific residential and business products offered by Sprint, AT&T and MCI throughout the study period (from 1987 through 1994 and perhaps into early

⁹ Together the McAvoy and Hausman affidavits here consist of 50 pages, 28 and 22 pages respectively. In addition, BellSouth has submitted the draft of Professor MacAvoy's book entitled The Failure of Antitrust and Regulation to Create Competition in Long-Distance Telephone Services (Competition in Long-Distance) which consists of 291 pages. Thus together with its comments of 25 pages in length, BellSouth's pleading here is 366 pages. Sprint would note that the page limitation in this proceeding for initial comments is 45 pages. Sprint does not request any relief on this matter. However, it would seem fair to point out that if the Commission wishes its page limitations to be carefully observed, it probably should not allow "books" to be casually attached to comments or replies.

1995) in which he conducted his test.¹⁰ Thus, Professor MacAvoy ignored the fact that competition has brought about the very rapid introduction of new products. In the case of Sprint, some of the business service offerings used by Professor MacAvoy were being phased out during the study period and replaced with new products offering more aggressive discounts.¹¹ Sprint's sales and marketing efforts are directed toward its new products as they are introduced, and the older products are gradually withdrawn from the market. Professor's MacAvoy's reliance on the prices of products at the end of their life cycle has, therefore, introduced a substantial bias into his price-cost analysis.

Professor MacAvoy's analysis of discounts in the residential segment of the market is equally flawed. Professor MacAvoy

¹⁰ For example, Professor MacAvoy used Sprint's VPN product and three of Sprint's WATS products in his analysis: Dial "1" WATS, Dial "1" WATS ADVANTAGEsm, and Ultra WATS®; and two 800 products: FONLINEsm and Ultra 800sm. Competition in Long-Distance at 109.

¹¹ As of October 1, 1994, Sprint's VPN service was no longer available for new customer subscription and as of the first quarter of 1995, Sprint WATS and Ultra 800 products were no longer available to new customers. In January 1992, Sprint introduced its new business product, Sprint Clarity®, for the small- to medium-sized business market. Sprint Clarity®, which was designed to replace the WATS and 800 products, integrates switched and dedicated access for both inbound and outbound service and switched data service. It has a simpler rate structure and enhanced features and billing capabilities. In addition, customers are afforded greater volume discounts because all services contribute to achieve a higher volume. It also offers significant volume and term discounts. Sprint's business communications services now include other new products, such as The Most for Businesssm, Sprint Premieresm, Real Solutionssm, and Business Sense®.

claims that because "discount plans have been set up as offering percentage discounts off standard MTS tariff rates," they "did not have the effect of causing a breakdown in the tacitly collusive pricing patterns observed in the provision of standard MTS...." MacAvoy Affidavit at 7. But, his claim here appears to be based upon the night/weekend discounts off standard MTS rates, *id.*, and he appears, therefore, to have ignored the numerous discounted service plans available to residential customers. Sprint's optional calling services now include The Most®, The Most Worldwide®, Sprint World®, Sprint Worldwide®, TimeBank® and Sprint Sense®, as well as many other international calling plans.¹² Most of these plans are not tied to Sprint "standard MTS rate" and are not limited to night or weekend calling. Other IXC's also offer a variety of discounts plans which are not merely discounts off standard MTS rates for night/weekend calling.

Moreover, by limiting his analysis to a few outdated services offered to businesses and night/weekend discounts off the standard MTS rate offered to residential customers, Professor MacAvoy fails to take into account the rapidly growing number of contract tariffs and promotional offerings. Sprint has filed

¹² Some of these offerings have a monthly recurring charge but they are unrestricted and available to all residential customers. TimeBank is a Dial-1 service wherein a Sprint customer with monthly usage in excess of \$30 receives one free minute of domestic usage for every five minutes of paid usage and bonus credits after 180 paid minutes.

over one thousand contract tariff options, generally for large business customers, and has offered hundreds of promotions to both residential and business customers.¹³

From even this brief overview, it is clear that Professor MacAvoy's analysis is seriously deficient. All of a carrier's offerings affect the prices consumers pay for service, and therefore the price-cost margins. A conclusion that the price-cost margins are almost the same for discount plans as for non-discount plans is not valid unless all relevant discounts are considered.

Professor Hausman claims that Sprint, AT&T and MCI are engaging in "lock-step" price increases which he argues is evidence of an oligopolistic market with low levels of competition. As discussed, the Commission has reached a different conclusion as to the state of competition in the

¹³ During the time period examined by Professor MacAvoy, Sprint's tariffs stated that it would offer its customers promotional discounts of up to 35%. Thus, many promotions which offered discounts equivalent to 35% or less were not specifically described in Sprint's tariffs. Sprint offered numerous other promotions, such as its Sprint Priority Rewards ProgramSM (which awards points which can be redeemed for a variety of long distance, travel and entertainment rewards), Sprint Double Credit Promotion (which offered two free months of service), Sprint Triple Credit Promotion (which offered three free months of service), and Split the Weekend Promotion (which offered The Most subscribers a 50% discount on weekend calls). Many other promotions were targeted to attract new customers and win back customers who had switched to another carrier. Other promotions offered discounts for international calls to particular regions.

interexchange market. It has found the IXC market to be substantially competitive and has concluded that lock-step price increases are due not to anticompetitive price collusion but rather "to the fact that price caps have kept basic schedule rates below cost." *AT&T Reclassification Order*, 11 FCC Rcd at 3314.

In any case, Professor Hausman concedes that the alleged problem of "lock-step" price increases would not be eliminated under a policy of mandatory detariffing. Hausman Affidavit at ¶¶7, 32. Rather, according to Professor Hausman, the only way to solve this "problem" is to allow the entry of the RBOCs into the interstate interexchange market. As already explained, however, RBOC entry into the interexchange market is not at issue here. The issue being considered is mandatory detariffing.

II. THE COMMISSION'S DOMINANT/NONDOMINANT REGULATORY STRUCTURE REMAINS VALID.

Although the Commission's Notice seeks comment on the limited issue of the appropriate tariffing policy for nondominant carriers, certain parties, including certain of the RBOCs, have taken the opportunity presented by this proceeding to renew their collateral attack on the Commission's dominant/nondominant regulatory structure. Thus, they argue that regardless of whether the Commission adopts a permissive or mandatory detariffing policy, it must apply such policy to all carriers on an even-handed basis. See e.g., *Bell Atlantic* at 4-5; *BellSouth*

at 18; Nynex at 5; and SBC at 6.¹⁴ Otherwise, they claim, the continuation of the asymmetric approach adopted in *Competitive Carrier*, under which some carriers would have to file tariffs while others would not, would harm consumers and not be in the public interest. See, e.g., SBC at 6. Such argument is patent nonsense.

The asymmetrical regulatory paradigm of *Competitive Carrier* is based upon asymmetrical market power. Carriers like the RBOCs which possess substantial market power by virtue of their bottleneck control of exchange access facilities must be subjected to close regulatory scrutiny in order to ensure that they do not exercise such power in ways which contravene Sections 201 and 202 of the Act, 47 USC §§ 201 and 202, and thereby harm competition and consumers. Such close regulatory scrutiny is simply not necessary in the case of nondominant carriers since they lack the market power to engage in unreasonable or unjustly

¹⁴ U S West argues that the Commission should declare that the local exchange carriers should be allowed to offer their access services pursuant to contract tariffs. U S West at 6. This argument is baseless. There is simply no valid reason why the Commission should give dominant carriers a license to exploit their market power to discriminate in the provision of bottleneck exchange access facilities. U S West states that AT&T was allowed to offer contract tariffs before it was declared to be nondominant. *Id.* However, AT&T was allowed to offer contract tariffs because the Commission found that the segment of the market in which services would be provided pursuant to contract tariffs was substantively competitive. *Interstate Competition Decision*, 10 FCC Rcd at 4573. Plainly, there is no way that the Commission can find that the exchange access market is substantially competitive.

discriminatory conduct. As the Department of Justice recently explained at page 7 of its Comments filed May 16, 1996 in CC Docket No. 96-98 (*Implementation of the Local Competition Provisions In the Telecommunications Act of 1996*):

...entrants should not be subjected to unnecessary regulation in order to satisfy notions of competitive "equity." Incumbent LECs are subjected to regulatory restrictions largely because they possess substantial market power. Absent possession of market power, there is no reason to subject entrants to the same constraints, and there is a substantial cost to competition in doing so.

Contrary to the unsupported allegations of the RBOCs, the Commission's dominant/nondominant regulatory policies have not harmed consumers or competition. Rather, as the Commission has found, such policies have in large measure contributed to the development of what is now an increasingly competitive interexchange market in which no carrier currently is able to exercise market power. The RBOCs offer no plausible reason why the Commission should abandon such a successful regulatory policy at this time, especially when the RBOCs with all of their monopoly-endowed advantages will likely soon be able to provide out-of-region interexchange services and presumably will eventually be able to provide in-region services as well.

III. THE RECORD SUPPORTS ALLOWING NONDOMINANT IXCS TO OFFER BUNDLED PACKAGES OF CUSTOMER PREMISES EQUIPMENT ("CPE") AND INTEREXCHANGE SERVICES.

As set forth in its initial comments, Sprint supports the Commission's proposal to permit nondominant IXCs to offer bundled

packages of CPE and interexchange services as long as such carriers also provide the interexchange services included within the bundle on a totally separate unbundled basis. Generally, with the exception of the equipment manufacturers (or their representative associations), most of the commenting parties have come to the same conclusion.¹⁵

The equipment manufacturers' contrary position is based upon their view that the factors which led to the adoption of anti-bundling rule in 1980 in the *Second Computer Inquiry*, 77 FCC 2d 384 (1980) still exist today. See, e.g., Independent Data Communications Manufacturers Association at 2 and Coalition at 3. However, as Sprint and others have pointed out, both the CPE and interstate interexchange market are now substantially competitive. Thus, there is no basis to assume, as the equipment manufacturers do, that carriers will be able to force customers into taking unwanted equipment in order to receive transmission services or conversely taking unwanted transmission services in order to obtain certain equipment.

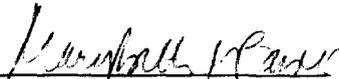
¹⁵ At least one equipment manufacturer -- Compaq -- does not object to the removal of the anti-bundling rule for nondominant carriers. Although the Consumer Electronics Retailers Coalition ("Coalition") does object to the repeal of the anti-bundling rule for non-dominant carriers, it suggests that if the rule is removed for such carriers, the Commission must require the separate offering of interstate interexchange services on an unbundled basis. Coalition at 12-13.

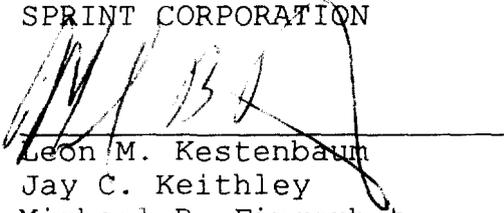
IV. CONCLUSION.

For the reasons set forth in its initial comments as well as those discussed above Sprint respectfully requests that the Commission (1) abandon its mandatory detariffing proposal; (2) reinstate its successful permissive detariffing policies of the past; and (3) eliminate the prohibition on bundling CPE with communications services.

Respectfully submitted,

SPRINT CORPORATION


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